Stephen ak Runa & Ors v Mega Jutamas Sdn Bhd & Ors

HIGH COURT (MIRI) — SUIT NO 22–62 OF 2007(MR)
STEPHEN CHUNG JC
23 SEPTEMBER 2011

Native Law and Custom — Land dispute — Native customary rights ('NCR') over land — Whether plaintiffs had or had acquired NCR over land — Legitimate expectation — Whether plaintiffs had legitimate expectation to be given land — Whether authorised person of public authority or Sarawak government had made promise or representation to give land to plaintiffs — Whether such person had resiled from promise — Counterclaim — Whether first defendant should succeed on counterclaim for vacant possession

The plaintiffs, the natives of Sarawak, claimed to have acquired native customary rights ('NCR') over an area of land described as Lot 95 Sawai Land District distuated at Niah ('the land') by occupying and cultivating the land since the early 1990s. The second defendant had issued to the first defendant a provisional lease for a term of 60 years in respect of the land. When the land was alienated by the second and third defendants to the first defendant, the plaintiffs claimed that the alienation was in violation of their rights as natives. They commenced the present action against the defendants. However, eleven of the plaintiffs filed a notice of discontinuance to withdraw their claims against the defendants, leaving the remaining 21 contesting the alienation of the land on the grounds that they had a legitimate expectation to be given the land and seeking declaratory orders, injunctive reliefs and damages against the defendants as prayed for in their statement of claim. The current Ketua Kampong of the village formed by the plaintiffs (Kampong Wawasan), who was not one of the plaintiffs in this suit, testified that a group of people from his village had visited the office of the second defendant and applied for the land for their houses and for their farms before the land was alienated to the first defendant. The plaintiffs further claimed that on the advice and encouragement of the second defendant they had submitted an application for the land to be allocated to them. It was thus the plaintiffs' case that a public authority had made a promise or representation in respect of their application for the land and that this representation had given rise to an expectation that that they would be considered favourably or be given the land. The defendants denied the plaintiffs' claims. The officer from the second defendant said that his department had rejected the plaintiffs' applications at first because the land applied for was situated within the Sawai Protected Forest and later because the third defendant had decided to alienate the land to the first defendant for an oil palm plantation. The first defendant also counterclaimed, inter alia, for vacant

possession of the land, an order to restrain the plaintiffs from entering and trespassing the land and to remove their buildings and structures on the land.

Held, dismissing the plaintiffs' claim and allowing the first defendant's counterclaim with costs to be taxed, if not agreed:

(1) There was no provision in the Land Code (Sarawak) which provided that the plaintiffs or the native occupiers of state land should be given priority or preference or a right to be heard in the event that the Sarawak government intended to alienate the land occupied by them to a third party. As the land was inside the Sawai Protected Forest, the plaintiffs were prohibited under the Forests Ordinance from entering, farming or occupying the land. Thus the plaintiffs had unlawfully occupied the land from 1994 onwards. Under the Land Code (Sarawak) the plaintiffs could not acquire any NCR over the land cleared and farmed by them. As such, the plaintiffs had no rights to the land and no legitimate expectation in respect of any such rights (see paras 23, 31–33).

(2) In his evidence before this court, the Ketua Kampong had not referred to any promise or representation made by a specific person in authority, which had encouraged the plaintiffs to enter, occupy, settle and farm the land. Neither was there any evidence of any named person who represented that the plaintiffs' application for the land would be considered favorably nor that the land would be given to them. Instead the evidence showed that the land applied for was situated within the Sawai Protected Forest and that their chances were slim (see paras 24–26).

(3) On the evidence, the plaintiffs had failed to establish that the second defendant's officers had made a promise to exclude the lots cleared and farmed by the plaintiffs from the land alienated to the first defendant. In any case the dialogues between the plaintiffs and the officers of the second defendant, which were in effect attempts by the latter to mediate a peaceful resolution to the disputes that had arisen between the first defendant and the plaintiffs, were held after the land had been alienated to the first defendant. Thus, on the evidence, the plaintiffs had failed to establish on a balance of probabilities that the second defendant or its officers had made any promise on behalf of the third defendant from which they had subsequently resiled (see paras 27–30, 40).

(4) The first defendant succeeded on its counterclaim for vacant possession of the land. This court also ordered the plaintiffs to remove their buildings and structures on the land within 30 days. The plaintiffs and their families were also restrained from entering and trespassing the land (see para 41).

[Bahasa Malaysia summary

Plaintif-plaintif, penduduk asal Sarawak, mendakwa telah memperoleh hak-hak adat anak watan ('HHAW') ke atas kawasan tanah yang dikenali sebagai Lot 95 Daerah Tanah Sawai di Niah ('tanah tersebut') dengan mendiami dan mengusahakan tanah tersebut sejak awal tahun 1990an. Defendan kedua telah mengeluarkan pajakan sementara kepada defendan pertama untuk tempoh 60 tahun berkaitan tanah tersebut. Apabila tanah tersebut diberi milik oleh defendan kedua dan ketiga kepada defendan pertama, plaintif-plaintif mendakwa bahawa pemberi milikan itu telah melanggar hak-hak mereka sebagai anak watan. Mereka telah memulakan tindakan ini terhadap defendan-defendan. Walau bagaimanapun, 11 orang daripada plaintif-plaintif telah memfailkan notis pemberhentian untuk menarik balik tuntutan mereka terhadap defendan-defendan, meninggalkan baki 21 orang mempertikaikan pemberi milikan tanah tersebut atas alasan-alasan bahawa mereka mempunyai jangkaan sah untuk dikemukakan ke atas tanah tersebut dan memohon perintah-perintah deklaratori, relief-relief injunksi dan ganti rugi terhadap defendan-defendan sebagaimana dipohon dalam penyataan tuntutan mereka. Ketua Kampong kampung yang dibentuk oleh plaintif-plaintif (Kampong Wawasan), yang bukan salah seorang daripada plaintif-plaintif dalam guaman ini, telah memberi keterangan bahawa sekumpulan orang daripada kampungnya telah melawat pejabat defendan kedua dan memohon untuk tanah rumah-rumah mereka dan ladang-ladang mereka sebelum tanah tersebut diberi milik kepada defendan pertama. Plaintif-plaintif selanjutnya mendakwa bahawa atas nasihat dan galakan defendan kedua mereka telah mengemukakan permohonan agar tanah tersebut diagih-agihkan kepada mereka. Oleh itu adalah kes plaintif-plaintif bahawa pihak berkuasa awam telah membuat perjanjian atau representasi berkaitan permohonan mereka untuk tanah tersebut dan bahawa representasi ini telah menimbulkan jangkaan bahawa mereka akan dipertimbangkan atau diberikan tanah tersebut. Defendan-defendan menafikan dakwaan-dakwaan plaintif-plaintif tersebut. Pegawai daripada defendan kedua menyatakan bahawa jabatannya telah menolak permohonan-permohonan plaintif-plaintif pada mulanya kerana tanah yang dipohon terletak dalam kawasan Hutan Lindungan Sawai dan kemudian kerana defendan ketiga telah memutuskan untuk memberi milik kepada defendan pertama untuk penanaman kelapa sawit. Defendan pertama juga menuntut balas, antara lain, untuk milikan kosong ke atas tanah tersebut, perintah menghalang plaintif-plaintif daripada memasuki dan menceroboh ke dalam tanah tersebut dan untuk memindahkan bangunan dan struktur mereka yang berada atas tanah tersebut.

Diputuskan, menolak tuntutan plaintif-plaintif dan membenarkan tuntutan balas defendan pertama dengan kos dikenakan cukai, jika tidak bersetuju:

(1) Tiada peruntukan dalam Kanun Tanah (Sarawak) yang memperuntukkan bahawa plaintif-plaintif atau penduduk tempatan

tanah kerajaan patut diberikan keutamaan atau kelebihan atau hak untuk didengar sekiranya kerajaan Sarawak berniat untuk memberi milik tanah yang didiami mereka kepada pihak ketiga. Oleh sebab tanah tersebut dalam kawasan Hutan Lindungan Sawai, plaintif-plaintif dilarang di bawah Ordinan Perhutanan untuk memasuki, bercucuk tanam atau mendiami atas tanah tersebut bermula dari tahun 1994. Di bawah Kanun Tanah (Sarawak) plaintif-plaintif tidak dapat memperoleh apa-apa HHAW ke atas tanah tersebut yang telah diterangkan dan diusahakan oleh mereka. Oleh itu, plaintif-plaintif tiada hak ke atas tanah tersebut dan tiada jangkaan sah berkaitan apa-apa hak sedemikian (lihat perenggan 23, 31–33).

(2) Dalam keterangannya di hadapan mahkamah ini, Ketua Kampung tidak merujuk kepada apa-apa perjanjian atau representasi yang dibuat oleh individu tertentu yang berkuasa, yang telah memberi galakan kepada plaintif-plaintif untuk memasuki, menyelesaikan dan mengusahakan tanah tersebut. Tiada juga apa-apa keterangan sesiapa yang dinamakan untuk mewakili permohonan plaintif-plaintif untuk tanah tersebut akan dipertimbangkan sewajarnya mahupun tanah tersebut diberikan kepada mereka. Sebaliknya keterangan menunjukkan bahawa tanah yang dipohon terletak dalam kawasan Hutan Perlindungan Sawai dan bahawa peluang mereka adalah tipis (lihat perenggan 24–26).

(3) Berdasarkan keterangan, plaintif-plaintif telah gagal membuktikan bahawa pegawai-pegawai defendan kedua telah membuat perjanjian untuk mengecualikan lot-lot yang diterangkan dan diusahakan oleh plaintif-plaintif daripada tanah yang diberi milik kepada defendan pertama. Dalam apa keadaan dialog-dialog antara plaintif-plaintif dan pegawai-pegawai defendan kedua, yang mana merupakan percubaan oleh defendan kedua untuk menjadi pengantara kepada satu resolusi yang aman terhadap pertikaian-pertikaian yang timbul antara defendan pertama dan plaintif-plaintif, yang telah diadakan selepas tanah tersebut diberi milik kepada defendan pertama. Oleh itu, berdasarkan keterangan, plaintif-plaintif telah gagal untuk membuktikan atas imbangan kebarangkalian bahawa defendan kedua atau pegawai-pegawainya telah membuat apa-apa perjanjian bagi pihak defendan ketiga yang mana akhirnya telah ditarik balik oleh mereka (lihat perenggan 27–30, 40).

(4) Defendan pertama telah berjaya dalam tuntutan balasnya untuk milikan kosong ke atas tanah tersebut. Mahkamah ini juga memerintahkan plaintif-plaintif mengalihkan bangunan dan struktur atas tanah tersebut dalam tempoh 30 hari. Plaintif-plaintif dan keluarga mereka juga dihalang daripada memasuki dan menceroboh ke atas tanah tersebut (lihat perenggan 41).]

Cases referred to

Ahmad Tajuddin bin Hj Ishak v Suruhanjaya Pelabuhan Pulau Pinang [1997] 1 MLJ 241; [1997] 2 CLJ 225, CA (refd)
Attorney-General of Hong Kong v Ng Yuen Shim [1983] 2 AC 629, PC (refd)
Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd [1995] 3 MLJ 331, FC (refd)
Darahman bin Ibrahim & Ors v Majlis Mesyuarat Kerajaan Negeri Perlis & Ors [2008] 4 MLJ 309; [2008] 4 CLJ 538, CA (refd)
JP Berthelsen v Director General of Immigration, Malaysia & Ors [1987] 1 MLJ 134; [1986] CLJ (Rep) 160, SC (refd)
Kesatuan Sekerja Pembuatan Barangan Galian Bukan Logam v Director General of Trade Unions & Anor [1990] 3 MLJ 231; [1990] 2 CLJ (Rep) 218, HC (refd)
R (on the application of Bibi) v Newham London Borough Council [2002] 1 WLR 237, CA (refd)
R v North and East Devon Health Authority, ex p Coughlan [2001] QB 213, CA (refd)
R v Secretary of State for Education and Employment, ex p Begbie [2000] 1 WLR 1115, CA (refd)
Rowland v Environment Agency [2005] Ch 1, CA (refd)
South Bucks District Council v Flanagan [2002] 1 WLR 2601, CA (refd)

Legislation referred to

Forest Ordinance 1958 s 36
Local Authorities (Annual Payment in Lieu of Rates) Order 2006 Part 1, Part 2
National Land Code
Palm Oil Registration and Licensing Authority (Incorporation) Act 1976
Palm Oil Research and Development Act 1979
Sarawak Land Code (Cap 81) ss 10(4), 28

Harrison Ngau (HNL & Co Advocates) for the plaintiffs.
Victor Lau (Izan Lau & Co Advocates) for the first defendant.
Joseph Chioh (SAG Chambers) for the second and third defendants.

Stephen Chung JC:

[1] There were 32 plaintiffs in this suit. On 19 August 2010, 11 of them filed a notice of discontinuance to withdraw their claims against the defendants. There are 21 plaintiffs left in this suit.

[2] The remaining 21 plaintiffs are the residents of Kampung Wawasan, KM 15, Jalan Ladang BLD, Suai, Niah. The plaintiffs claim to be natives of Sarawak and that they have acquired native customary rights ('NCR') over a large area

of land by occupying and cultivating the land in the early 1990s. The boundary of the land claimed by the plaintiffs is shown and edged in red in a map annexed to the statement of claim marked as X and in another map tendered as exh P7. The plaintiffs did not plead the size or the area of this land claimed by them but pleaded that the boundary of the land is the same as the boundary of a parcel of land described as Lot 95 Sawai Land District which was alienated by the second and third defendants to the first defendant.

[3] The plaintiffs pleaded that the land should not have been alienated to the first defendant because the plaintiffs have acquired NCR over the land which have not been extinguished nor have they been paid any compensation in the event their NCR have been extinguished. It was pleaded that the issuance of the provisional lease to the first defendant amounted to a compulsory acquisition or extinguishment of their NCR.

[4] The plaintiffs also claimed that, prior to the alienation of the land to the first defendant, on the advice and encouragement of the Lands and Surveys Department and the Forests Department, Miri, they had submitted an application for the land to be allocated to them which application was under consideration by the lands and surveys. The plaintiffs claimed that on the advice and encouragement of the District Office, Niah, they had formed the Jawatankuasa Kemajuan dan Keselamatan Kampung ('JKKK') for their kampong. The plaintiffs claimed that over the years they had received assistance from various government agencies to cultivate oil palms on the land, they had been licensed to harvest and sell the oil palm fruits and they had made annual payments in lieu of rates to the Subis District Council.

[5] The plaintiffs claimed that they have a legitimate expectation to be given the land, that they have a right to be heard before the land was alienated to the first defendant, that the land was alienated to the first defendant without their knowledge and that the alienation of the land to the first defendant was in violation of their rights under the laws. The plaintiffs prayed for declaratory orders, injunctive reliefs and damages against the defendants as prayed for in the statement of claim.

[6] The defendants denied the plaintiffs' claims. The first defendant also counterclaimed against the plaintiffs for an order for vacant possession of the land, for an order to restrain the plaintiffs from entering and trespassing the land and for an order that the plaintiffs shall remove the plaintiffs' buildings and structures on the land.

[7] The agreed facts were that, on 17 October 2005, the first defendant was issued by the second defendant with a provisional lease for a term of 60 years in respect of the land described as Lot 95 Sawai Land District situate at Sungai

Kabulo, Ulu Suai, Suai, Niah and containing an area of approximately 2145 hectares. The land was previously within the boundary of the Sawai Protected Forest. The Sawai Protected Forest was created under the Forests Ordinance on 1 October 1954 via Gazette Notification No 966 on 13 August 1954. The land alienated to the first defendant was excised from the Sawai Protected Forests on 17 May 2005 via Gazette Notification No 3767 on 24 November 2005. The land was also declared as Mixed Zone Land on 17 May 2005 via Gazette Swk LN 101 on 17 October 2005.

[8] According to the agreed issues for trial, the first issue for trial was whether the plaintiffs have or have acquired NCR over the land and this included asking the questions whether the plaintiffs are Ibans and therefore natives of Sarawak and entitled to claim NCR in accordance to the laws of Sarawak.

[9] This case was part-heard by the previous High Court judge. The parties have agreed for the trial to be continued before me. The notes of proceedings showed that on 19 May 2010, during the trial, learned counsel for the plaintiffs advised the court that the plaintiffs had abandoned their claims to NCR over Lot 95 Sawai Land District ('Lot 95') and that the plaintiffs' claims are now based on their legitimate expectation to be given the areas actually occupied and cultivated by them only, which are situated within Lot 95, and not to the whole 2145 hectares of land within Lot 95. The plaintiffs had specifically abandoned paras 14.1, 14.2, 14.3, 14.4, 15, and prayers 6, 7 and 9 of the reliefs in the statement of claim.

[10] The principle of legitimate expectation is concerned with the exercise of a discretion or the discretionary powers of a decision-maker. It is based on a representation made by the decision-maker about how he or it would exercise that discretion thus giving rise to an expectation in the representatee. It may involve a lawfully created expectation or an unlawfully created expectation and may include an expectation that a certain procedure or process may be followed or used eg an expectation to prior consultation, or a preference to be given certain benefits over other classes of persons: see *Attorney-General of Hong Kong v Ng Yuen Shim* [1983] 2 AC 629, *Kesatuan Sekerja Pembuatan Barangan Galian Bukan Logam v Director General of Trade Unions & Anor* [1990] 3 MLJ 231; [1990] 2 CLJ (Rep) 218, *JP Berthelsen v Director General of Immigration, Malaysia & Ors* [1987] 1 MLJ 134; [1986] CLJ (Rep) 160, *Ahmad Tajuddin bin Hj Ishak v Suruhanjaya Pelabuhan Pulau Pinang* [1997] 1 MLJ 241; [1997] 2 CLJ 225, *Rowland v Environment Agency* [2005] Ch 1, and *South Bucks District Council v Flanagan* [2002] 1 WLR 2601.

[11] In *Darahman bin Ibrahim & Ors v Majlis Mesyuarat Kerajaan Negeri Perlis & Ors* [2008] 4 MLJ 309; [2008] 4 CLJ 538, Abdul Malik Ishak JCA referred to *Attorney-General of Hong Kong v Ng Yuen Shiu* which identified three

practical questions to be asked in cases regarding legitimate expectation as follows: (a) to what has the authority committed itself; (b) has the authority acted unlawfully in respect of its commitment; and (c) what should the court do about it. In *Darahman Ibrahim*'s case the appellants agreed to move and farm the land after hearing the promises made to them by the Menteri Besar of Perlis.

[12] A legitimate expectation can only arise on the basis of a lawful promise. The representation should be clear, unambiguous and unqualified by the public authority. Once the claimant has established the legitimate expectation, he must show that it would be unfair for the public body to resile from giving effect to the legitimate expectation. The test is whether the public authority has acted so unfairly that its conduct amounts to an abuse of power: *R v North and East Devon Health Authority, ex p Coughlan* [2001] QB 213, *R v Secretary of State for Education and Employment, ex p Begbie* [2000] 1 WLR 1115, *R (on the application of Bibi) v Newham London Borough Council* [2002] 1 WLR 237.

[13] In the instant case, was there any promise or representation made by an authorised person on behalf of a public authority or the Sarawak Government to the plaintiffs in respect of their application for the land giving rise to an expectation that they would be considered favourably or be given the land applied for by them. Further, was there any promise or representation made by such an authorised person to the plaintiffs that they would be consulted or be given a right to be heard before the land was to be alienated to the first defendant.

[14] Exhibit P7 is a map prepared by PW1 and PW5. It showed the parcels or lots of land situated within Lot 95 which are claimed by the 21 plaintiffs as having been farmed and occupied by them. Each parcel or lot has a number on it which corresponded to the plaintiffs number in the writ eg Lot 1 would belong to plaintiff No 1 listed in the writ. Some plaintiffs claimed more than one parcel of land (see exh 7A).

[15] PW1 is plaintiff No 18. Although he said that he lived at Kpg Wawasan, he did not testify when he or his family had moved to and occupied the land at Kpg Wawasan; whether anyone, and if so, who had asked them to move to and occupy the land claimed by them. PW5 worked with Borneo Resources Institute, a non-government organisation, which assisted the plaintiffs to prepare the map.

[16] PW2 is plaintiff No 14 and is the Tuai Rumah of Rumah Tapu at Sungai Sibau Merah, Suai. Rumah Tapu is situated outside Lot 95. He and his family did not live at Kpg Wawasan but he said he farmed on a plot of land inside Lot 95. He said that the first time he and his family farmed on the land inside Lot

95 was in 1996, following in the footsteps of Budon Ak Tindit. He said that plaintiff No 11 and plaintiff No 23 were among others who had also farmed on the land inside Lot 95 in 1996.

[17] He said that in 1998, all the plaintiffs who had farmed inside Lot 95 had a meeting at the house of Budon Ak Tindit and they decided to form a kampong there which they called Kampung Wawasan. He said Budon Ak Tindit was elected the first Tuai Rumah or Ketua Kampung of Kpg Wawasan but he resigned in 2004 due to poor health and was succeeded by Tuai Rumah Rajang Ak Segalang ('PW4') who continues to be the Tuai Rumah until now. He said that initially they planted padi but in 2004 they started to plant oil palms and other fruits. They applied for and were licensed by the Malaysia Palm Oil Board ('MPOB') to harvest and sell oil palm fruits since 2005 and 2007. They harvested their first oil palm fruits in 2007 and sold them to the nearby mills.

[18] PW4 is the current Tuai Rumah of Kpg Wawasan which has about 27 families but he is not a plaintiff in this suit. He said that he settled and farmed on a plot of land in Lot 95 in 1996 after TR Budon had settled there in 1994. PW4 basically corroborated the evidence of PW2 but added that the Subis District Council also imposed and collected fees in lieu of rates from the residents of Kampung Wawasan who cultivated oil palms on plots of land of more than 20 hectares.

[19] PW4 testified that in 2000 TR Budon led a group of them to the lands and surveys to apply for the land where their kampong is situated and where they had planted their crops. He said that the lands and surveys advised them that the land in question was situated within the Sawai Protected Forest. He said that TR Budon told the Lands and Surveys that they really needed the land for their houses and for their farms. He said they were then advised to put in a formal application. He said that TR Budon as the ketua kampong therefore sent separate letters dated 18 December 2000 to the Lands and Surveys Department, Forests Department, Resident Office and District Office at Miri to apply for the land. He said that there was no reply to these letters from any of the departments or offices.

[20] On 1 March 2005, PW4 said that he wrote another letter to the lands and surveys applying for the land. He also wrote to their Member of Parliament ('MP') who wrote a letter dated 18 March 2005 on their behalf to the lands and surveys. The lands and surveys by a letter dated 5 May 2005 replied to the MP advising that the Department had received the application which was receiving the Department's attention.

[21] PW4, together with the Tuai Rumah of four other longhouses, wrote a

letter dated 16 August 2005 to the lands and surveys to ask for reconsideration of their applications for land after they had been informed by the first defendant that the land occupied by them which was situated within Lot 95 would to be alienated to the first defendant. Their MP also sent a letter of support to the Director of Lands and Surveys in respect of their letter. PW4 testified that the Director of Lands and Surveys did not reply to their letter or to their MP's letter.

[22] Mr David Laeng ('DW2') from the lands and surveys the defendant said that his Department had received two applications from the plaintiffs for the land dated 18 December 2000 and 1 March 2005 respectively. He said that both applications had been rejected. The reason for rejecting the first application was because the land applied for was then situated within the Sawai Protected Forest. The reason for rejecting the second application in 2005 was that the Sarawak Government had by then decided to alienate the land to the first defendant for an oil palm plantation. DW2's evidence was corroborated by Encik Abdul Razak bin Morshidi ('DW3'). The evidence showed that the Lands and Surveys had by a letter dated 30 March 2001 addressed to Budon Ak Tindit ('exh D5') rejected their application for the land. PW4's evidence that there was no reply to their letters could not be correct.

[23] There is no provision in the National Land Code which provides that the plaintiffs or the natives or occupiers of state land shall be given priority or preference or would be consulted or be given a right to be heard in the event the Sarawak Government intends to alienate the land occupied by them to a third party. Similarly, there is no such provision in the Forests Ordinance in the event the Sarawak Government decides that a protected forest shall cease to be a protected forest and that a portion of the land shall be excised from the protected forest and be alienated to a third party.

[24] From the evidence of PW4, who is the Ketua Kampung of Kpg Wawasan, who accompanied TR Budon to the lands and surveys to make the application and later as the Ketua Kampung of Kpg Wawasan had followed up on the application, he did not testify or refer to any promise or representation made by a specific or any person in authority on behalf of a public authority or the Sarawak Government who encouraged them to enter, occupy, settle and farm on the land inside Lot 95.

[25] He did not name or refer to any such person who promised or represented or told them that their application for the land would be considered favourably or that they would be given the land. He did not name or refer to any such person who promised or represented or told them that they would be given preference over the first defendant or others in the event the land was to be alienated by the second and or third defendants. He did not

name or refer to any such person who promised or represented or told them that they would be consulted or be given a right to be heard prior to the land being alienated to the first defendant or others. In particular, he did not name or refer to any person in authority from the lands and surveys or from the Forests Department who had made any of the above promises or representations which would bind the Sarawak Government.

[26] Instead, PW4 had testified that when he accompanied TR Budon together with the others to go to the lands and surveys in 2000 to apply for the land, they were told by the lands and surveys that the land they wanted to apply for was situated inside the Sawai Protected Forest. That would mean their chances to be given the land would be slim. The evidence showed that subsequently their applications had been rejected and they could not claim any legitimate expectation in respect of the land.

[27] Although the plaintiffs in their pleadings had referred to a meeting held on 26 July 2005 with the lands and surveys, where it was pleaded that they were informed that a provisional lease in respect of the land had been issued by the second defendant to a company and that they were assured that all the areas where the plaintiffs had cleared within Lot 95 would be excluded from the provisional lease, PW4 did not testify as such in his evidence during the trial. The plaintiffs did not produce any minutes of such a meeting and the plaintiffs did not in their submissions refer to this meeting.

[28] This must be contrasted with the two dialogues held on 21 February 2006 and 14 August 2006, after the provisional lease had been issued to the first defendant on 17 October 2005. The plaintiffs exhibited the minutes of these two dialogues during the trial and had referred to them in their submissions.

[29] On the evidence, the plaintiffs had not established that there was such a meeting where a certain promise was made by the lands and surveys to exclude the lots cleared and farmed by the plaintiffs from the land alienated to the first defendant.

[30] The two dialogues were held after the land had been alienated to and the provisional lease had been issued to the first defendant. The dialogues were attempts by the lands and surveys to mediate a peaceful resolution to the disputes which had arisen between the plaintiff and the first defendant ie the first defendant wanted the plaintiffs to vacate Lot 95 but the plaintiffs refused. The advice by DW2 during the second dialogue to plot the areas developed by the plaintiffs to be brought up to higher authorities was merely an advice that the plaintiffs should bring their problems to the higher authorities and that could not amount to any legitimate expectation or to an estoppel which would

bind the Sarawak Government that they would be given the lands applied for by them or that they should be consulted prior to the alienation of the land to the first defendant.

[31] Were the plaintiffs at liberty and entitled to enter and farm the land inside the Sawai Protected Forest in 1994 or 1996? Section 36 of the Forests Ordinance prohibits certain acts in a protected forest including trespassing into the protected forest or to erect any building or to clear or break up any land for cultivation or for any other purpose in the protected forest. The plaintiffs did not apply for any permits to enter and farm the land within the Sawai Protected Forest.

[32] Similarly, there are provisions in the Land Code which prohibit the occupation of State land without any permit or consent from the Superintendent of Lands and Surveys. Section 10(4) of the Land Code (Sarawak) specifically provides that such occupation shall not confer any right or privilege on the natives notwithstanding any law or custom to the contrary and such occupation shall be deemed to be in unlawful occupation of State land.

[33] It was obvious that when the plaintiffs entered, farmed and occupied the land from 1994 onwards, they had done so inside the Sawai Protected Forest and which were prohibited under the Forests Ordinance. They had and continue to unlawfully occupy the land. Under the Land Code, they could not and did not acquire any NCR over the land cleared and farmed by them. The plaintiffs do not have any NCR and have abandoned their claims to any NCR over the land. They have no rights to the land, no rights to be protected in respect of the land and no legitimate expectation in respect of any such rights.

[34] On the assistance rendered to the plaintiffs by MPOB, it was constituted under the Malaysia Palm Oil Board Act which replaced the Palm Oil Registration and Licensing Authority (Incorporation) Act 1976 Palm Oil Registration and Licensing Authority (Incorporation) Act 1976and the Palm Oil Research and Development Act 1979. It is a Federal legislation. Its primary functions are to set up the Malaysian Palm Oil Board and to regulate the oil palm industry in Malaysia. It is not concerned with the ownership, registration, occupation, possession or use of lands. It has no control, powers or jurisdictions to decide on the ownership, registration, occupation, possession or use of lands in Sarawak. Any assistance rendered to any of the plaintiffs by MPOB did not and cannot bind the Sarawak Government in respect of any legitimate expectation to be alienated or be given a right to be heard in respect of the land applied for by them.

[35] The Subis District Council is constituted under the Local Authorities

Ordinance. The Local Authorities (Annual Payment in Lieu of Rates) Order, 2006 provides for an annual payment in lieu of rates of rateable holding specified in Part 1 of the Schedule to the local authority within whose jurisdiction the rateable holding is situated, the rates to be computed in the manner shown in Part II of the Schedule. Part 1 refers to all land exceeding 20 hectares in area used for oil palm plantation.

[36] It must be noted that the Local Authorities (Annual Payment in Lieu of Rates) Order 2006 only came into force on 1 January 2006, after the land had been alienated and the provisional lease had been issued to the first defendant on 17 October 2005. The annual payment in lieu of rates, after the land had been alienated to the first defendant, could not amount to any legitimate expectation that the plaintiffs would be alienated the land or part thereof or be given a right to be heard by the second and third defendants prior to the alienation of the land to the first defendant.

[37] The plaintiffs also submitted that pursuant to s 28 of the Land Code, the first defendant was not entitled to an area equal to the area stated to be alienated if on survey such area was found not to be available. In this respect, the plaintiffs referred to the environment impact assessment ('EIA') report prepared for the first defendant. The plaintiffs submitted that the report at p 89 thereof stated that 'ground surveys may be required to clearly establish the boundary of the territorial claim to avoid future disputes and that areas to be conceded to the plantation for development and areas to be left undisturbed (where required) must be clearly defined and agreed upon by all the parties concerned'. It was submitted that from the contents of the EIA report, the first defendant had conceded that the areas or parcels of land occupied by the plaintiffs would be excluded from Lot 95 and left undisturbed and that the first defendant was estopped from denying this, referring to *Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd* [1995] 3 MLJ 331 and other authorities.

[38] The EIA report, read in its context, referred to the territorial claims of the plaintiffs and accordingly advised the first defendant to carry out ground surveys to clearly establish the boundary or areas of the plaintiffs' claims. If the plaintiffs' claims were confirmed, these areas would have to be excluded from Lot 95. However, the plaintiffs had subsequently abandoned their claims to NCR to the land ie there were no territorial claims anymore. Therefore, there was no necessity to exclude the areas claimed by the plaintiffs from Lot 95.

[39] Further, the EIA report was prepared on behalf of the first defendant and submitted to the Natural Resources and Environment Board ('NREB') before the first defendant could commence works on its oil palm plantation. It was not prepared for the purpose of this litigation and was not addressed to the

plaintiffs. It was not and could not amount to a representation made to the plaintiffs which induced them to believe that the first defendant would exclude their parcels from Lot 95. The contents of the EIA report could not amount to an estoppel against the first defendant.

[40] On the evidence before the court, the plaintiffs had failed to establish on a balance of probabilities that there was any promise or representation made by or on behalf of the Superintendent of the Lands and Surveys, Miri or for and on behalf of the Sarawak Government concerning or in relation to Lot 95 and that they had subsequently resiled from the promise or representation made to the plaintiffs. I find that the plaintiffs had failed to prove their case against the defendants.

[41] For the reasons given, the plaintiffs' claims are dismissed. in respect of the first defendant's counterclaim, I made the following orders:

(a) that the plaintiffs shall within 30 days from today give vacant possession of the land described as Lot 95 Sawai Land District or parts thereof ('the said land') to the first defendant;

(b) the plaintiffs shall within 30 days from today remove all the plaintiffs' buildings and structures within the said land, failing which the first defendant shall be entitled to do so at the costs of the plaintiffs;

(c) upon the expiry of the said 30 days, the plaintiffs their families agents or servants or otherwise shall be restrained and an injunction is hereby granted to restrain them from entering and or trespassing the said land; and

(d) the plaintiffs their families agents or servants or otherwise shall be restrained and an injunction is hereby granted to restrain them from erecting any buildings or structures or carrying out or preparing to carry out site clearing and planting of oil palms and all other works concerning the same within the said land.

[42] Costs to the defendants to be taxed, if not agreed.

Plaintiffs' claim dismissed and first defendants's counterclaim allowed with costs to be taxed, if not agreed.

Reported by Kohila Nesan